In the High Court of Judicature at Madras

Dated: 20.9.2007

Coram:

The Honourable Mr.Justice Elipe Dharma Rao
and
The Honourable Mr.Justice S.Tamilvanan

W.P.No.31244 of 2004

W.Suryapushpam
W/o A.Amaladoss .. Petitioner

vs.

1. The Government of Tamil Nadu,
represented by its Secretary,
Health and Family Welfare Department,
Fort St.George,
Chennai-600 009.

2. The Director of Public Health and
Preventive Medicine,
Chennai-600 006.

3. The Regional Deputy Director of
Public Health and Preventive Medicine,
Madurai-2.

4. The District Health Officer, Ramnad at Madurai.

5. The Tamil Nadu Administrative Tribunal,
represented by its Registrar, Chennai. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the order of the Tamil Nadu State Administrative Tribunal, dated 12.1.2004 passed in O.A.No.7053 of 1995 and to quash the same and direct respondents 1 to 4 to regularise the service of the petitioner as Junior Assistant with effect from 11.8.1975, confer all other consequential promotion and to pay all pensionary and other benefits accordingly to the petitioner.

For petitioner : Mr.P.Premkumar for M/s.S.Vasuki
For respondents 1 to 4 : Mr.C.Ramesh, Addl.G.P.

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Order

(The Order of the Court was made by Elipe Dharma Rao,J)

The Writ Petition is directed against the impugned order of the Tribunal, dated 12.1.2004 passed in O.A.No.7053 of 1995 (common order passed in O.A.No.7053 of 1995 and 60 of 2004)

2. The Tribunal held that the petitioner's services were regularised on 10.11.1986 in accordance with G.O.Ms.No.996, Personnel and Administrative Reforms Department, dated 22.9.1984, that the Government has recognised the appointment of the petitioner-applicant as Junior Assistant in National Malaria Eradication Programme (for short, NMEP) with effect from 25.6.1984 and therefore, the earlier order of regularisation cannot be restored because, it was passed without jurisdiction and the applicant is also not entitled to get the benefit of earlier order of regularisation passed in 1991. Therefore, the applicant has been regularised as Junior Assistant and the Tribunal directed that the applicant will be entitled for pension and other benefits with effect from the date of her regularisation a per the G.O.Ms.No.996, dated 22.9.1984.

3. The case of the petitioner/applicant is that she was appointed as Junior Assistant in November 1966 in the Primary Health Centre in Ramanathapuram District. Thereafter, she was appointed as Junior Assistant on 8.8.1975 in the NMEP and from 8.8.1975 till the date of retirement on 31.8.2003, the petitioner worked in various capacities and retired as Superintendent.

4. The question of claiming pension from the date of her regularisation, is in dispute, on the ground that the petitioner/applicant was appointed by the authorities when the post of Junior Assistant is covered by the Tamil Nadu Public Service Commission Regulations, whereas the applicant was appointed as a candidate sponsored by the Employment Exchange. Therefore, the regularisation order issued by the fourth respondent-District Health Officer is without jurisdiction and the regularisation is to be made as per the consent given by the TNPSC. Though the TNPSC gave its consent to regularise the services of the employees under the above said NMEP, based on which G.O.Ms.No.1771, Health and Family Welfare Department, dated 13.10.1978 fixing the date of regularisation of those persons who were working as on 1.1.1973, as the petitioner was not working as on 1.1.1973, but working from the date of 8.8.1975, the petitioner was not entitled for regularisation as per G.O.Ms.No.1771, though the regularisation order was issued by the fourth respondent-District Health Officer, dated 9.10.1976 with effect from 11.8.1975 and the Probation of the petitioner was also declared by order dated 7.10.1977 and the seniority list was prepared and she was placed at Sl.No.265 through the proceedings of the second respondent, dated 2.7.1980. But subsequently, as per the consent given by the TNPSC to

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regularise those persons who were working under the above said NMEP and appointed through the Employment Exchange, the Government passed orders in G.O.Ms.No.996, dated 22.9.1984, on the basis of which the services of the petitioner/applicant came to be regularised by letter dated 29.11.1986 with effect from 25.10.1976.

5. As per the above said G.O.Ms.No.996, the petitioner's services were regularised with effect from 25.6.1984. By letter dated 29.11.1986, it was stated by the authorities that the petitioner was regularised in her service with effect from 25.10.1976, contrary to the regularisation order passed by the District Health Officer, Ramanathapuram, dated 9.10.1976. Then, the petitioner made a representation on 31.1.1987 to the Regional Deputy Director of Public Health and Preventive Medicine, Madurai. Pending consideration of the above said representation, the third respondent issued proceedings dated 22.1.1991, modifying the earlier order of regularisation of the services of the petitioner/applicant dated 9.10.1976 as from 25.6.1984, placing her on probation for a period of two years and also declaring her probation as was being completed on 27.3.1991.

6. Once again, the representation of the petitioner dated 16.3.1994 to restore the date of regularisation as per the order dated 9.10.1976 and since there was no response, the petitioner filed O.A.No.7053 of 1995 before the Tribunal, which was disposed of on 12.1.2004.

7. Although the petitioner filed the Original Application before the Tribunal, pending the same, O.A.No.60 of 2004 was filed for payment of terminal benefits after the retirement, which was stated to be on 31.8.2003. The Tribunal, on a consideration of the facts and circumstances of the case, passed a common order in both the Original Applications, fixing the date of regularisation of the services of the petitioner as 25.6.1984 as per the G.O.No.996, dated 22.9.1984. The Tribunal also directed the respondents to pay the pension and other terminal benefits, against which, the present Writ Petition has been filed.

8. It is contended by the petitioner that when the services of the petitioner were regularised with effect from 11.8.1975 as per the order of the fourth respondent, dated 9.10.1976, without giving any opportunity, subsequent orders have been passed, changing the date of regularisation of the services of the petitioner, which is detrimental to the interest of the petitioner and also in violation of the principles of natural justice.

9. It is further contended that though the benefit is conferred under the G.O.Ms.No.1771, dated 13.10.1978, the same is not applicable to the case of the petitioner, as she was not working as on the cut-off date, namely on 1.1.1973. But as seen from the facts and circumstances, the post of Junior Assistant was sanctioned by the Central Government for the year 1958 and she was transferred from the Public Health Centre to the NMEP on 8.8.1975 and she was continuously working from the date of transfer and

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her services came to be regularised by the order dated 9.10.1976 passed by the fourth respondent/District Health Officer based on the order of the Regional Health Officer, and regularising her services with effect from 11.8.1975. It is seen that she was transferred from the Health Centre to the NMEP on 8.8.1975.

10. Further, preparing the seniority list on 2.7.1980 and placing the petitioner at Sl.No.265, and changing the date of regularisation solely on the ground that the Officer who had passed the order of regularisation is actually the District Health Officer, is without jurisdiction and secondly, the post of Junior Assistant is coming within the jurisdiction of the TNPSC as per the Regulation 16(b) of the TNPSC Regulations, 1954 for regularisation of the services of all the temporary employees in the category of Junior Assistant, Typist and Steno-Typist included in the Tamil Nadu Ministerial Service, Tamil Nadu Judicial Ministerial Service and Tamil Nadu Secretariat Service, who were continuing as on 25.6.1984.

11. Originally, the consent was given by the TNPSC to regularise the services of the petitioner/applicant. Therefore, depriving the petitioner to receive the pension from the date of initial regularisation of her services, by order dated 9.10.1976, with effect from 11.8.1975 and modifying the same to that of 25.6.1984 as per the G.O.Ms.No.996, dated 22.9.1984 (stated to be through the proceedings dated 29.11.1986), is prejudicial and detrimental to the interest of the petitioner/applicant and therefore, the Tribunal has committed illegality in considering the date of regularisation of the applicant as 25.6.1984 instead of 11.8.1975, solely on the ground that she was not working as on 1.1.1973, as per the conditions stipulated under G.O.Ms.No.1771, dated 13.10.1978 and she was appointed through the Employment Exchange and not by the TNPSC. Thus, the persons who are appointed through the Employment Exchange have to be regularised after obtaining the consent from the TNPSC.

12. It is not in dispute that the petitioner was working from 8.8.1975 in the NMEP. The question of regularisation is within the jurisdiction of the respondents by obtaining the consent from the TNPSC as per the Regulations of the TNPSC and to pass appropriate orders, instead of delaying the regularisation of the services of the petitioner solely on the ground that she was appointed through the Employment Exchange and the consent of the TNPSC is to be taken only to regularise her services.

13. As seen from the above said facts and circumstances, the services of the applicant came to be regularised as early as by proceedings dated 9.10.1976. Thereafter, by proceedings dated 29.11.1986 and finally by proceedings dated 22.1.1991, the date of regularisation of the services of the petitioner came to be modified, more so, without giving any opportunity to the petitioner, which is prejudicial to the interest of the petitioner and therefore, the order of the Tribunal is liable to be set aside.

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14. As rightly contended by the petitioner, the change of date of regularisation of the services of the petitioner from time to time solely on the above said grounds, is not only in violation of the principles of natural justice by not affording an opportunity of hearing to the petitioner to put forth her case, but also detrimental to the interest of the petitioner.

15. For all the reasons stated above, the impugned order of the Tribunal is set aside. Accordingly, we hold that the petitioner/applicant is entitled to be regularised from 11.8.1975 as per the proceedings of the District Health Officer (fourth respondent) dated 9.10.1976. The respondents 1 to 4 are directed to fix the pay scale of the petitioner accordingly and revise the pension and other service/terminal benefits in accordance with law, as indicated above, within a period of six weeks from the date of receipt of a copy of this order. The Writ Petition is accordingly allowed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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Copy to

1. The Secretary to Government,
   Health and Family Welfare Department,
   Fort St.George, Chennai-600 009.

2. The Director of Public Health and Preventive Medicine,
   Chennai-600 006.

3. The Regional Deputy Director of
   Public Health and Preventive Medicine, Madurai-2.

4. The District Health Officer, Ramnad at Madurai.

5. The Registrar,
   The Tamil Nadu Administrative Tribunal, Chennai.8

1 cc To The Government Pleader, SR.58842.
1 cc To M/s.S.Vasuki, Advocate, SR.58671.

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